

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

J.S., (a minor child by and through his *
father and next friend, John Seawright), *
*
Plaintiff, *
*
vs. * CASE NO.02-05-928-T
*
Officer Curt Campbell, in his individual *
capacity, *
*
Defendant. *

DEFENDANT'S MOTION FOR MORE DEFINITE STATEMENT

COMES NOW Defendant, Curt Campbell, by and through counsel, and states that the Plaintiff's Complaint is unclear regarding the alleged constitutional violations and requests Plaintiff to file a More Definite Statement. As grounds for the request for a More Definite Statement, Defendant states as follows:

1. Count I of Plaintiff's Complaint is titled "Deprivation of Civil Rights under Color of State Law." In Count I of Plaintiff's Complaint, Plaintiff alleges that he had a "protectable interest in his freedom under the 14th Amendment," he had a right "under the 4th and 14th Amendments," and that Defendant punished "Plaintiff without according him due process of law in violation of the 14th Amendment."
2. Count I of Plaintiff's Complaint references numerous alleged violations.
3. Defendant cannot discern as to whether he is being sued for a 4th Amendment Excessive Force claim, a 14th Amendment Deprivation of Liberty Claim, or possibly an 8th

Amendment Cruel and Unusual Punishment claim.

4. This Defendant anticipates raising the defense of Qualified Immunity and Discretionary Function Immunity.

5. A heightened pleading is required when a Plaintiff asserts claims against individuals. The Eleventh Circuit has made clear that, when a government official is sued in his or her individual capacity, under Section 1983, and raises the affirmative defense of qualified immunity, plaintiff's complaint will be held to a greater degree of specificity than is required under Rule 8 of the Federal Rules of Civil Procedure. When the affirmative defense of qualified immunity will be raised, the heightened pleading is required so that the Court can evaluate whether "the allegedly violated right was clearly established when the allegedly wrongful act occurred." *Swann v. Southern Health Partners, Inc.*, 388 F.3d 834 (11th Cir. 2004).

6. Defendant requests the Court to order Plaintiff to file a More Definite Statement specifically enumerating which cause of action this Defendant allegedly violated and what specific acts constitute violation of Plaintiff's rights.

WHEREFORE, Defendant respectfully requests the Court to Order Plaintiff to file a More Definite Statement so that Defendant can frame and prepare the defense of Qualified Immunity.

/s/ Rick A. Howard
ALEX L. HOLTSFORD, JR. (HOL048)
RICK A. HOWARD (HOW045)
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OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day sent by mail, postage prepaid, an exact copy of the foregoing document to:

Jay Lewis
Andy Nelms
847 S. McDonough Street
Montgomery, Alabama 36104

This the 15th day of November, 2005.

/s/ Rick A. Howard
OF COUNSEL